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Office Memorandum • UNITED STATES GOVERNMENT

TO : MEMORANDUM FOR THE RECORD

DATE: 20 November 1951

FROM :

SUBJECT: Dual Compensation -- Retired Army Officer Employed by a Government Corporation.

1. 23 Comptroller General 815. Facts. The Administrator, Foreign Economic Administration, sought authorization from the Comptroller General to hire a retired Army colonel to act as an employee of the U. S. Commercial Company, a wholly-owned Government corporation. The Army Officer was retired for being past the statutory age limit. He was unwilling to accept the position with the U. S. Commercial Company if it involved the sacrifice of his retirement allotment.

2. The U. S. Commercial Company had the power of action of any private corporation, including the power to employ without regard to Federal laws applicable to the employment or compensation of officers or employees of the United States.

3. The Administrator sought to rely on Dalton v. United States, 71 Ct. Cl. 421 (1931) which held in an analogous fact situation that employment with such a Government corporation does not constitute holding an office within the meaning of the dual compensation laws.

4. The Comptroller General held that "in more recent years it is the rule rather than the exception that congressional legislation on personnel matters expressly refers to Government corporation employees and either includes them within their scope or authorizes administrative action to that end. See, for example, the recent statutes with respect to the civil service, classification, annual leave, sick leave, retirement, overtime pay, citizenship, and the administration of the oath of Federal office. That unanimity of expression manifests a clear congressional intention that, for purposes of the same general character, Government employees covered by those acts are to be treated and regarded as Government employees."

5. Regarding the Dalton case, the Comptroller stated, "the case of General Dalton to which you refer ... might be distinguishable upon the basis of the changing concepts and policies which have developed since its date, as illustrated above; but, in any event, its authority as an indication of the intent of the Congress is made indecisive by the action of the Congress in disapproving that particular judgment and declining to appropriate therefor."

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6. Further, "it is evident that the authority of the U. S. Commercial Company to employ officers, agent, et cetera, without regard to laws applicable to the employment of officers or employees of the United States, as cited in your letter, would not validate the payment of Army retired pay or preserve [REDACTED] status as a retired officer if other laws would jeopardize the retired status and pay upon his acceptance of civilian employment."

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